

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-1226

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1226

UNITED STATES OF AMERICA,

Appellee,

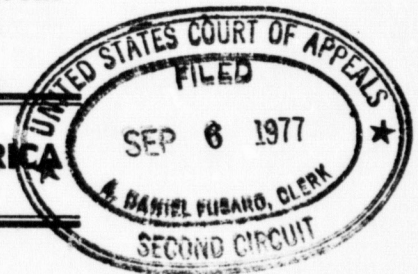
—v.—

HAROLD LANE,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR THE UNITED STATES OF AMERICA



ROBERT B. FISKE, JR.,
*United States Attorney for the
Southern District of New York,
Attorney for the United States
of America.*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

HAROLD LANE,

Defendant.

76 Cr. 879-CSH

MEMORANDUM AND ORDER

15-3844

HAIGHT, District Judge:

The Court has for determination several pre-trial motions. They are disposed of as follows:

I.

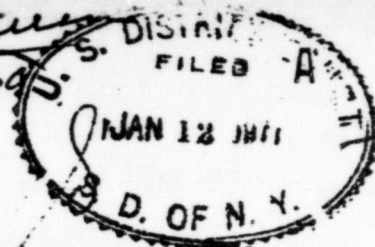
Defendant's motion for a bill of particulars, pursuant to Rule 7(f), F.R.Cr.P., is granted. United States v. O'Connor, 237 F.2d 466, 475-6 (2d Cir. 1956); 1 Wright, Federal Practice and Procedure (1969) §129. The Government is directed to respond not later than January 14, 1977.

II.

Defendant moves for a severance (a) of the tax counts (24-26) from the rest of the indictment; and (b) of the false statement counts (2-23) from the embezzlement count (1). The motion, if granted, would lead to three trials in place of one. The motion is denied in its entirety.

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Rule 8(a), F.R.Cr.P., permits joinder of offenses

in the same indictment if the offenses charged:

"...are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan."

To obtain a severance of offenses, the defendant must demonstrate prejudice resulting from the joinder. Rule 14, F.R.Cr.P. United States v. Adams, 434 F.2d 756, 758 n. 3 (2d Cir. 1970).

Counts 1 and 2-23 are represented by the Government in its brief (p. 4) as "integral parts of a common scheme to take food stamp monies", which is what a reading of the indictment would lead one to expect the proof would tend to show. Joinder of those counts is obviously proper.

As for the tax counts, 24-26, one may anticipate a substantial overlapping of proof, and joinder is proper in the interests of trial economy and convenience. United States v. Roselli, 432 F.2d 879 (9th Cir. 1970); Baker v. United States, 401 F.2d 958 (D.C.Cir. 1968).

III.

Defendant's motion for discovery of the grand jury testimony of former employees of Lane Check Cashing, Inc. is denied. Rule 16(a)(1)(A), F.R.Cr.P., limits pre-trial discovery of a grand jury witness to cases where "the defendant is a corporation, partnership, association or labor union", and the witness

was so situated as to bind the defendant. Defendant Lane is an individual, and thus the rule does not apply. He argues that he should be regarded, for Rule 16 purposes, as the corporation's alter ego, thereby composing an unusual variation on the corporate veil-piercing theme; but no authority for the proposition is cited, and I decline to disregard the explicit limitations of the rule.

IV.

Defendant's motion for production of exculpatory material, if any, requires no dispositive action at this time, in view of the Government's stated awareness of its obligations under Brady v. Maryland, 373 U.S. 83 (1963).

V.

Defendant's demand for notice of evidence possibly subject to suppression motions is mooted by the Government's expressed willingness to respond (brief, p. 7).

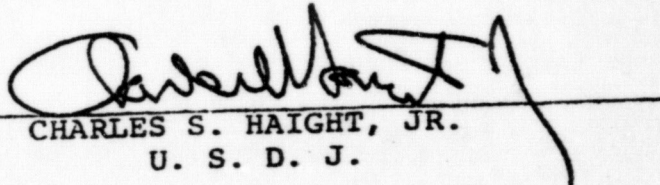
VI.

The Government's motion for reciprocal discovery, pursuant to Rule 16(b), F.R.Cr.P., is granted. It is apparent from the affidavit of Government counsel that defendant has been afforded considerable discovery under Rule 16(a), thereby triggering the provisions of Rule 16(b). Defendant is therefore directed to produce forthwith for inspection by Government counsel those

items referred to in Rule 16(b)(1), subject, of course, to the limitations imposed by Rule 16(b)(2).

It is So Ordered.

Dated: New York, New York
January 12, 1977



CHARLES S. HAIGHT, JR.
U. S. D. J.

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Dollan

2 excused. Thank you for being here this morning.

3 (Witness excused.)

4 THE COURT: We have some time before lunch.
5 We can start another witness at least.

6 MRS. HARRIS: The government calls Austin
7 Avery.

8 MR. HEROLD: May counsel approach the bench
9 before Detective Avery testifies?

10 THE COURT: Yes. I will see you in the robing
11 room.

12 (In the robing room.)

13 THE COURT: All right, what is the problem?

14 MR. HEROLD: The problem is this, your Honor:
15 in all frankness I was aware that Detective Avery would
16 testify and I was aware prior to the trial that he might
17 testify. I am personally acquainted with Detective Avery
18 and I know that normally when he is questioning somebody,
19 he usually testifies that he gives them the Miranda
20 rights. So I did not anticipate any problems along
21 that line of attack, because if he has a suspect he
22 normally testifies that he gives such rights.

23 Now, consequently, I made no such application
24 prior to trial to suppress that item of testimony, to
25 wit, the written statement signed by Harold Lane at the

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2 request of Detective Avery, which is going to be offered
3 through his testimony here.

4 However, when, during the course of the trial,
5 I was given various 3500 material and I was given
6 Detective Avery's about a day or two ago, definitely two
7 days ago, in his federal grand jury testimony on July 12,
8 1976, at page 4, he testifies as part of an answer to a
9 question, "When we arrived at headquarters, I took a
10 statement from him which he indicated 23,000 was taken
11 in the robbery. At that point I advised him of his
12 rights and informed him that a statement was made by
13 Miss Dollan to my partner and myself in which she
14 indicated she was carrying a dummy figure of \$20,000."

15 Now, it is the statement that he took
16 prior to the advice of rights, according to this grand
17 jury testimony, that is being offered in evidence, as
18 well as a statement after advice of rights.

19 Now, I am not asking here for an exclusion
20 of the one given after the advice of rights, but it
21 appears from this grand jury testimony that he already
22 knew from Miss Dollan and that there was a discrepancy
23 in the amount and, therefore, Mr. Lane was suspect. I
24 am not saying that he should have told him his rights over
25 the telephone because he was not indicating to Mr. Lane

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2 that he was actually in on the conversation at all. But
3 when he gets him at headquarters he gets a statement from
4 him to the effect that \$23,000 was taken in the robbery,
5 and then he advises him of his rights. It is that first
6 statement at headquarters which is encompassed in a
7 written document here that I seek to exclude on that
8 basis.

9 THE COURT: On the fact that it appears that
10 the Miranda warning was not given before he elicited from
11 Mr. Lane the written document?

12 MR. HEROLD: The written document before the
13 Court or at least the statement from him that \$23,000 was
14 taken in the robbery. The statement given at headquarters,
15 not the one over the telephone which he listened in to.
16 Obviously, that does not require an advice or Miranda
17 rights under any circumstances.

18 THE COURT: Two things are going to be offered
19 through Detective Avery, I suppose.

20 One is the oral statement which appears to have
21 been made by Lane to Avery before the Miranda rights were
22 given, is that correct?

23 MR. HEROLD: That is the way it seems to
24 read in the federal grand jury testimony.

25 THE COURT: That particular statement was what?

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2 MR. HEROLD: \$23,000 was taken in the robbery.

3 THE COURT: When was the written statement
4 indicated?5 MR. HEROLD: I cannot really tell from the
6 context of this grand jury testimony.

7 THE COURT: I mean executed.

8 Mrs. Harris?

9 MRS. HARRIS: First of all, I would like to
10 talk with Detective Avery to get the facts clear in my
11 mind. It would appear to me there are probably three
12 statements here.13 The first is the statement that Detective Avery
14 overheard on the telephone when Mr. Lane was talking with
15 Miss Dollan. There cannot be any problem with respect to
16 that problem.17 MR. HEROLD: Nor am I seeking to exclude that.
18 That was settled yesterday.19 MRS. HARRIS: What counsel is saying, it
20 appears from the grand jury testimony when Mr. Lane came
21 down to headquarters he volunteered again that there was
22 \$23,000 missing. I will have to get my facts straight
23 from the detective, but I believe what Mr. Herold is
24 saying that then Mr. Lane was given Miranda warnings and
25 then it must be that the written statement that Mr. Lane

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2 gave to the police officers was given before the Miranda
3 warnings. I would assume.

4 May I break for a second and go check the
5 facts?

6 THE COURT: All right.

7 MRS. HARRIS: I will put one more thing on
8 the record now. I do not believe that this is the kind of
9 custodial situation, in any event, where failure to give
10 Miranda warnings prior to taking statements would be
11 fatal to the admission of the statements.

12 MR. HEROLD: I would agree it is not custodial
13 in the sense he is not under arrest. We can agree upon
14 that. But he was the target or suspect from the point
15 that the detective hears that conversation over the
16 phone.

17 MRS. HARRIS: There seems to be no requirement
18 of Miranda at that point.

19 THE COURT: I was wondering whether this was
20 genuinely a Miranda situation.

21 MR. HEROLD: I have always understood Miranda,
22 and of course I can be wrong, to include not just when
23 you are having somebody in custody but also where you make
24 them the target of the investigation or a suspect, that the
25 Miranda rights also apply.

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2 THE COURT: Yes, but doesn't the context
3 have to be a subsequent prosecution for that particular
4 activity? I may be wrong, but it seems to me the situation
5 would be different and closer to Miranda if I were not a
6 federal judge but with a state judge sitting in judgment
7 and presiding over a trial of charges brought against
8 Mr. Lane arising directly, in some way or other, out of
9 this statement that he made.

10 But that is not quite the situation. It is
11 being offered by the government essentially under 404-B,
12 I think, as a prior act which bears and has some
13 probative value on the charges that we are confronted
14 with here. But that is not the Miranda situation.

15 It seems to me it would be substantially
16 different and closer to Miranda if, following this
17 interview by the police and the taking of statements by
18 the police, state authorities on the basis of those
19 statements commenced an action of some sort or another
20 against Mr. Lane.

21 MR. HEROLD: I cannot feel that the difference
22 in that they did not prosecute would be fatal to my
23 objection. I feel that once they had him as a suspect,
24 which I feel they did, the fact they did not prosecute
25 him should not make admissible that which would otherwise be

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2 inadmissible. There may be a myriad of reasons why they
3 would not have prosecuted him, none of which may be in
4 any of our knowledge.

5 THE COURT: You want to check further on the
6 facts with your witness, is that right?

7 MRS. HARRIS: If your Honor feels that it is
8 necessary. Again, my major point here is that even if
9 this were the kind of situation where we would have to
10 consider this subject because it was an admission made
11 with respect to the charges in this case, I believe that
12 the facts as your Honor already knows them to be, in terms
13 of Mr. Lane voluntarily coming down to police headquarters,
14 it not being a custodial situation, would not have in
15 any event required the officer to give him his Miranda
16 warnings before Mr. Lane made the statement.

17 THE COURT: I am not going to keep them
18 too much longer before lunch. Why don't you start on the
19 examination. We may not reach this stage before I break
20 for lunch, which I am going to do in about 20 minutes.

21 MRS. HARRIS: It will go quite quickly. I
22 think we will reach it.

23 THE COURT: Then I am going to let them go
24 to lunch now and bring them back earlier than usual because
25 I want to consider this. It probably is not useful to

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2 even start on him, I suppose.

3 MRS. HARRIS: Would it be helpful if I go now
4 and check the facts?

5 THE COURT: Why don't you do that. Put those
6 on the record.

7 (Pause.)

8 MRS. HARRIS: The facts will be essentially as
9 follows:

10 First, Detective Avery overhears the
11 conversation between Miss Dollan and Mr. Lane, and your
12 Honor knows the essential content of that conversation.
13 At that time, Detective Avery gets on the phone and asks
14 Mr. Lane to come down to police headquarters. Mr. Lane
15 does come down to police headquarters and there he
16 volunteers again that \$23,000 was missing, and he asks to
17 go to the store to really check the safe and make sure
18 that that is what it is, that is, Mr. Lane asks to go
19 back to the store.

20 They go back to the store. Mr. Lane checks
21 the safe, and whatever else he may check, and again asserts
22 it was \$23,000 that was missing. They then go back to
23 police headquarters. On the way in the car to police
24 headquarters, Lane mentions to Avery that he is not
25 really worried about this because he is covered by \$20,000

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2 insurance.

3 They get back to police headquarters and at
4 that time Avery asks him to do the written statement.
5 After the written statement, Avery gives him the Miranda
6 warnings. Thereafter, there are even more conversations
7 when Mr. Lane admits that he had lied before and that in
8 fact only \$5,000 was missing.

9 THE COURT: What you seek to exclude on the
10 basis of Miranda are any statements prior to the warning?

11 MR. HEROLD: Yes, sir. Not the ones over
12 the telephone. I am not aiming at those. I am aiming
13 at the oral, and written apparently now, statements.

14 THE COURT: Written, that is quite clear.

15 MR. HEROLD: At headquarters or on the way back
16 and forth to headquarters from the store.

17 The thesis upon which the government seeks
18 to introduce them is that they were voluntary, although
19 that can well be, but I think that is really a question
20 of fact particularly when you are confronted with the
21 testimony in the grand jury, words such as, "I took a
22 statement"; it reads as if he was interrogating,
23 questioning.

24 THE COURT: Also the statement in the grand
25 jury testimony, "I then asked Mr. Lane if he would come to

2 his place of business, we would like to go over some figures
3 and other things which had taken place in the robbery."

4 So we have an indication by the police
5 officer that they wished to conduct a line of inquiry about
6 this sort of thing.

7 But even on your theory, Mr. Herold, I gather
8 statements given by Mr. Lane after the Miranda warnings
9 were given would be admissible, would they not?

10 MR. HEROLD: Assuming there is evidence they
11 were properly given, understood and waived, yes.

12 THE COURT: If that comes in, then it would be
13 possible for the government to put in evidence that
14 Mr. Lane acknowledged that he had lied in what he said
15 beforehand.

16 MR. HEROLD: I am aware of that, your Honor.

17 THE COURT: What do you need, a suppression
18 hearing on whether or not the warnings were properly
19 given?

20 MR. HEROLD: I believe so.

21 THE COURT: If it is a Miranda situation.

22 MRS. HARRIS: If in fact your Honor finds it
23 s a Miranda situation. There are at least two ways of
24 looking at this where it would not be a Miranda
25 situation at all.

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2 The first is what your Honor has suggested that
3 because it is not being used here against him with respect
4 to the charges in the indictment, and he was not charged in
5 the state matter, that it simply is not the kind of
6 situation that calls for Miranda.

7 Secondly, it is still my position that there
8 is enough evidence on this record of this man's background
9 so that as far as it being a custodial situation, I would
10 simply assert that it was not. He surely felt that he
11 was free to leave.

12 THE COURT: All right. I want to consider it
13 further. I am going to dismiss the jury now, and bring
14 them back at 1:30 and I will see counsel in the robing
15 room shortly before 1:30 and let you know.

16 (In open court; jury present.)

17 THE COURT: Ladies and gentlemen, a question
18 of law has come up which I want to consider somewhat
19 more fully. So I suggest now you go to lunch. It will
20 be a little earlier than before. In order to maximize
21 our time and keep things going, will you be kind enough
22 to be back at 1:30 and we will resume at that time. Do
23 not discuss the case amongst yourselves or with others.

24 (Luncheon recess.)

25

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2 AFTERNOON SESSION3 (1:30 p.m.)

4 (In the robing room.)

5 THE COURT: I have considered the intended
6 evidence of Detective Avery, with particular reference
7 to Miranda versus Arizona. I conclude, in the first
8 place, that it is not a Miranda situation at all. Mr. Lane
9 is not being prosecuted directly for any of the statements
10 or acts or the consequences of the acts that are directly
11 involved in the interview with the police officer.

12 I am bound to say I have not, in the 45
13 minutes that was available to me, found a case which
14 specifically holds that Miranda does not apply when the
15 prosecution does not arise directly out of the statements
16 that are in question, but I suggest that the reason it
17 is difficult to find such cases is because the proposition
18 is self-evident.

19 Secondly, I am persuaded that there is, at
20 least on the evidence so far, a complete absence of that
21 custodial or coercive element which lies at the heart of
22 Miranda. The Supreme Court in April of 1976 decided
23 Beckwith against United States, which in respect of its
24 requirement that a custodial atmosphere exists seems to
25 apply to this case a fortiore. That was a situation where

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2 the defendant and declarant was the target of an
3 Internal Revenue investigation and was interrogated
4 by members of the investigative branch of the Internal
5 Revenue Service itself, but the interrogation took place
6 in his home and consequently it was held that the element
7 of coercion, which is necessary to--I'm sorry, the element
8 of custody, custodial element with the inherent elements
9 of coercion, simply were not present and the Supreme
10 Court held that Miranda did not apply in a situation
11 like that.

12 And that has been, and by "that," I mean the
13 necessity of the custodial or coercive element, has been
14 a theme which has run through the Second Circuit's
15 decisions, notably United States against Caiello at
16 420 F. 2d. 471, United States versus Shlom, 420 F. 2d. 263,
17 and United States versus White, 417 F. 2nd. 89.

18 As I say, on the evidence that I have heard
19 so far, the atmosphere in which Mr. Lane spoke to
20 Detective Avery could not possibly be characterized as
21 custodial or coercive. I am going to listen carefully
22 to the first questions that are put to Detective Avery for
23 what I anticipate will be a further description of the
24 manner in which the conversation took place, but my
25 conclusion is that even if this were a Miranda situation,

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Avery-direct

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2 and I do not think it is, it is not a custodial situation.

3 So I am going to permit the questioning to
4 go forward and I do not see the need for a suppression
5 hearing.

6 So we can proceed on that basis.

7 (In open court; jury present.)

8 THE COURT: Call your next witness, please,

9 Mrs. Harris.

10 MRS. HARRIS: The government calls Austin

11 Avery.

12
13 A U S T I N A V E R Y, called as a witness
14 on behalf of the government, having been duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MRS. HARRIS:

18 Q By whom are you employed?

19 A White Plains Police Department.

20 Q And what is your position there?

21 A Detective.

22 Q How long have you been in the White Plains
23 Police Department?

24 A I'm in my twenty-first year.

25 Q And were you on duty on March 21, 1974?

1 rmjb 46

2 counts in the indictment.

3 I have refrained from any attempt to summarize the
4 evidence in this case, largely because counsel in their
5 summations have thoroughly reviewed the evidence and ad-
6 vanced their contention with respect thereto. You have
7 also, I am satisfied, followed the evidence carefully.
8 An effort on my part to summarize it again would only be
9 repetitious. You must, of course, consider all the evi-
10 dence and exhibits in the case; all are important. I
11 wish to make a number of additional points about the evi-
12 dence you have heard. You have heard testimony by
13 Agriculture and IRS agents that Mr. Lane made statements
14 to them about this case. If you find he did make the
15 statements, you may give these statements such weight as
16 you believe they deserve after considering all the circum-
17 stances which were brought out. You have heard evidence
18 about certain prior acts of Mr. Lane in the conduct of his
19 business not directly connected to the crimes charged in
20 the indictment. I refer, for example, to the events
21 attendant upon the robbery at the White Plains store in
22 March of 1974 and to the dealings involving American
23 Express Company. I charge you particularly that Mr. Lane
24 is on trial for certain specific acts. His general char-
acter is not on trial, his manner of conducting business

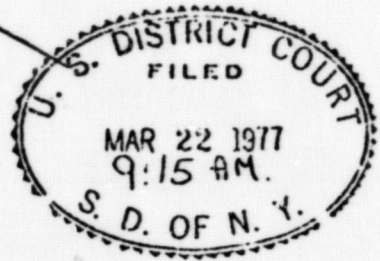
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1 as a general proposition is not on trial. You may not in
2 law consider these prior acts as revealing anything about
3 Mr. Lane's character and then draw a further inference as
4 to whether or not he was likely to commit the crimes
5 charged. Such prior acts may be considered by you only
6 to the extent, if any, that they tend to show factors
7 relevant to certain of the crimes charged, factors such
8 as opportunity or motive to commit those crimes or an
9 inconsistency with an innocent explanation of certain
10 activities.
11

12 In suggesting such possible considerations I
13 do not for a moment suggest that you should find them to
14 be present. That's not my function; it is entirely up to
15 you. I am simply charging you that evidence of prior acts
16 has a narrow and limited purpose in the law in relation
17 to the acts charged. You must not consider those acts as
18 reflecting anything about Mr. Lane's character because
19 character studies are not admissible in law to sustain
20 conviction on a criminal charge. If in this charge I have
21 made any reference to particular evidence in the case and
22 if my statement is not in accord with your own recollection
23 of the testimony, you will disregard my statements and
24 depend entirely upon your own recollection of the evidence
25 which governs at all times.

Miss Harris^A 21

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

HAROLD LANE,

Defendant.

76 Cr. 879-CSH

MEMORANDUM OPINION AND ORDER

75-3844

45712

BAIGHT, District Judge:

Harold Lane was convicted, following a two and one-half week jury trial, on all counts in a 26-count indictment which charged one count of embezzling Government monies, 18 U.S.C. §641; 22 counts of making false statements, 18 U.S.C. §1001; and 3 counts of attempting to evade Federal income taxes, 26 U.S.C. §7201.

Lane now moves for a judgment of acquittal notwithstanding the verdict of guilty, Rule 29(c), F.R.Cr.P.; or, in the alternative, for an order setting aside the guilty verdict and directing a new trial, Rule 33, F.R.Cr.P.

In United States v. Taylor, 464 F.2d 240 (2d Cir. 1972), the Second Circuit, overruling United States v. Feinberg, 140 F.2d 592 (2d Cir. 1943), cert. den., 322 U.S. 726, adopted the formulation of Judge Prettyman in Curley v. United States, 160 F.2d 229 (D.C.Cir. 1947), cert. den., 331 U.S. 837, in respect of the standard to be applied by the trial judge in passing upon a motion under Rule 29(c):

"The true rule, therefore, is that a trial judge, in passing upon a motion for directed verdict of acquittal, must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion; or, to state it another way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted. If he concludes that either of the two results, a reasonable doubt or no reasonable doubt, is fairly possible, he must let the jury decide the matter." 464 F.2d at p. 243.

Measured by this standard, the present defendant's motion must fail. The Government's evidence, which was voluminous and carefully prepared, revealed improper diversion of food stamp monies in an amount in excess of \$1 million; and repeated false statements in reports forwarded to the Department of Agriculture, with particular reference to deposits of food stamp monies which should have been made but were not. The defendant did not really contend on the trial that such events did not take place; nor does he do so on the present motion; and the evidence would not permit such a contention. The basic thrust of Lane's motion is that a number of other persons were engaged in the day-to-day operation of his several check cashing stores, and that the Government failed to prove the requisite degree of Lane's personal knowledge or participation in the acts giving rise to the indictment.

Defendant's counsel made essentially the same argument to the jury. The jury was entitled to accept the argument, which

would have exonerated Lane, or reject it and convict him. It chose the latter course. I cannot say, as a matter of law, that the jury was not entitled to do so. While much of the evidence was circumstantial, and the guilty verdict is undoubtedly based upon inferences which the jury drew from the evidence, it is not for the trial court, "ruling on a motion for judgment of acquittal, to assess the credibility of witnesses, weigh the evidence, or draw inferences of fact from the evidence. These are functions of the jury. The Court is limited to deciding whether a sufficient showing has been made to go to the jury on the basis of the view of the evidence and inferences therefrom most favorable to the prosecution." 2 Wright, Federal Practice and Procedure (1969) at §467, pp. 259-260.

The motion for acquittal is accordingly denied.

As for the alternative motion for new trial, under Rule 33, defendant alleges the following errors on the trial:

- 1) The denial of defendant's Rule 29(a) motion;
- 2) The admission of evidence of the March 21, 1974 robbery and defendant's efforts to use the dummy figure as the true amount of cash taken;
- 3) The admission, through Mattie Grady, of Daily Transaction Sheets through the end of 1973, in spite of the fact that she left Lane as a full-time employee in August of 1973;
- 4) The ruling that self-serving, exculpatory, hearsay statements of defendant to Special IRS Agent Suszynski could not be elicited from that witness;

5) The Court's refusal to charge the jury on the lesser included \$7203 violation of the tax laws.

Defendant also contends that the verdict was contrary to the weight of the evidence, and was not supported by substantial evidence.

Only two of these points require discussion. At the trial, the Court permitted the Government to adduce evidence that, on March 21, 1974, Lane's main check cashing store, at White Plains, was robbed at gun point. When the police arrived, Lane's books, and in particular a daily transaction sheet, showed that there had been about \$20,000 cash on hand and missing. A Lane employee informed the police that the \$20,000 was a "dummy figure", which Lane kept on the books, and that in fact only about one quarter of that amount had been taken in the robbery. With a police officer listening in on the telephone, the employee called Lane, who told her to keep quiet about the dummy figure. Lane subsequently signed a statement which could be interpreted (although Lane disputes the interpretation) as stating that \$23,000 had been taken, although he changed the statement when being confronted with the account of his employee. This same sort of "dummy figure" also appeared on the daily transaction sheets which were admitted into evidence in connection with the embezzlement and false statement counts in the indictment.

The Government contended that such evidence, with particular reference to the use made of the "dummy figure", demonstrated the manner in which Lane conducted his business, and could be viewed as evidence of an overall plan and design to falsify records and conceal

illegal sources of income. United States v. Hinton, 543 F.2d 1002, 1012 (2d Cir. 1976). Alternatively, the Government characterized Lane's activities in respect of the daily transaction sheet and "dummy figure" involved in the robbery as a prior act admissible under Rule 404(b), of the Federal Rules of Evidence.

The Court declined to admit the evidence on the first of these two grounds, but ruled that it was admissible under Rule 404(b), as admissible proof of opportunity (use of "dummy figures" for improper purposes) and as proof of absence of mistake or accident (thus negating defendant's argument that he was unaware of the "dummy figures" or that they resulted through inadvertence). The Government complains of this ruling as being more favorable to Lane than the law required. I remain of the view that the ruling was correct; and, as the record will indicate, the jury was given special instructions at the time the evidence was admitted, and at the conclusion of the trial, with respect to the limited purpose for which this evidence could be considered. On the present motion, Lane cites no authority for a contrary ruling.

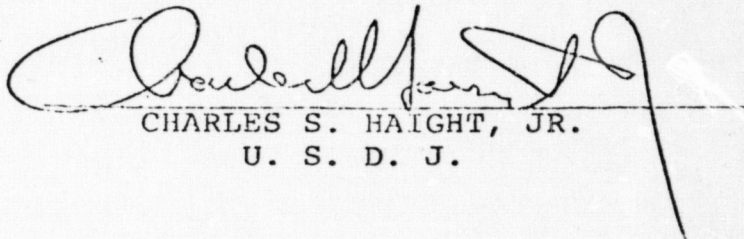
As to the Court's refusal to charge the jury on a lesser included violation of the tax laws, 26 U.S.C. §7203, such a charge would not have been appropriate in the circumstances of this case. Spies v. United States, 317 U.S. 492 (1943); Sansome v. United States, 380 U.S. 343 (1965); United States v. Bishop, 412 U.S. 346 (1973).

I have considered the defendant's other contentions, and find them to be without merit.

Accordingly the defendant's motions are in all respects denied.

It is So Ordered.

Dated: New York, New York
March 21, 1977



CHARLES S. HAIGHT, JR.
U. S. D. J.

JH:jp
1-1183

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HAROLD LANE
Net Worth Computation

ASSETS

	<u>12/31/71</u>	<u>12/31/72</u>	<u>12/31/73</u>
Cash in Banks			
First National City Bank	\$ 72.00	\$ 1,141.00	\$ 5.00
National Bank of Westchester	-	213.00	366.00
Total Cash in Banks	<u>\$ 72.00</u>	<u>\$ 1,354.00</u>	<u>\$ 369.00</u>
Land and Buildings	Appendix A-1 127,877.00	227,377.00	349,669.00
Automobiles	Appendix A-2 7,948.00	11,959.00	12,788.00
Other Investments	Appendix A-3 11,600.00	37,778.00	103,318.00
Cash Value of Life Insurance	1,500.00	1,500.00	1,500.00
Total Assets	<u>\$ 148,997.00</u>	<u>\$ 279,968.00</u>	<u>\$ 467,644.00</u>

LIABILITIES

Mortgage Payable	Appendix A-4 101,255.00	190,556.00	289,982.00
Chattel Mortgages Payable	Appendix A-5 1,661.00	9,849.00	7,603.00
Loan From Mother	4,200.00	4,200.00	4,200.00
Other Loans	Appendix A-6 1,040.00	1,170.00	7,064.00
Depreciation	Appendix A-7 4,253.00	6,157.00	8,989.00
Total Liabilities	<u>\$ 112,409.00</u>	<u>\$ 211,932.00</u>	<u>\$ 317,838.00</u>

Net Worth at Year End (Assets-Liabilities)	<u>\$ 36,588.00</u>	\$ 68,036.00	\$ 149,806.00
Net Worth at Beginning of Year		36,588.00	68,036.00
Increase in Net Worth		\$ 31,448.00	\$ 81,770.00
Adjustments	Appendix A-8	10,345.00	10,851.00
Adjusted Gross Income as Corrected		\$ 41,793.00	\$ 92,621.00
Adjusted Gross Income per Return (Non Filer)		-0-	-0-
Understatement of Adjusted Gross Income		\$ 41,793.00	\$ 92,621.00
Less: Itemized Deductions or Standard Deduction	Appendix A-9	(2,000.00)	(6,263.00)
Exemptions (4 at \$750-)		(3,000.00)	(3,000.00)
Taxable Income		<u>\$ 36,793.00</u>	<u>\$ 83,358.00</u>

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1-1183 AAPPENDIX A-1HAROLD LANE
Land and Buildings

<u>DESCRIPTION</u>	<u>DATE ACQUIRED</u>	<u>12/31/71</u>	<u>12/31/72</u>	<u>12/31/73</u>
620 South 7th Ave., Mt. Vernon	11/14/69	\$ 41,000.00	\$ 41,000.00	\$ 41,000.00
163 Gibson Ave., Greenburgh	12/15/70	43,000.00	43,000.00	43,000.00
2 George Place, Mt. Vernon	6/4/71	40,000.00	40,000.00	40,000.00
663 So. 3rd Ave., Mt. Vernon	5/12/72		47,000.00	47,000.00
105 Waverly Ave., Yonkers	6/2/73			10,000.00
425 Nuber Ave., Mt. Vernon	11/14/72		26,000.00	26,000.00
22 Plain Ave., New Rochelle	12/28/72		26,500.00	26,500.00
65 Sherman Ave., Mt. Vernon	2/8/73			68,000.00
218 So 2nd Ave., Mt. Vernon	11/10/73			16,792.00
360 So 2nd Ave., Mt. Vernon	12/26/73			27,500.00
Improvements and Equipment	1971	877.00	877.00	877.00
Improvements	11/14/69	3,000.00	3,000.00	3,000.00
		<u>\$ 127,877.00</u>	<u>\$ 227,377.00</u>	<u>\$ 349,669.00</u>

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APPENDIX A-2HAROLD LANE
Automobiles

<u>DESCRIPTION</u>	<u>12/31/71</u>	<u>12/31/72</u>	<u>12/31/73</u>
1970 Grand Prix Pontiac	\$ 4,673.00	\$ 4,673.00	\$ 4,673.00
1974 Chevrolet Camaro			4,840.00
1972 MG Convertible		4,011.00	
1970 Ford Mustang	3,275.00	3,275.00	3,275.00
	<u>\$ 7,948.00</u>	<u>\$ 11,959.00</u>	<u>\$ 12,788.00</u>

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APPENDIX A-3HAROLD LANE
Other Investments

<u>DESCRIPTION</u>	<u>12/31/71</u>	<u>12/31/72</u>	<u>12/31/73</u>
Second Mortgage	\$ 1,600.00	\$ 600.00	-
GSC of Westchester		7,500.00	\$ 7,500.00
Lane Check Cashing Capital Investment	5,000.00	5,000.00	5,000.00
Chester Hill Enterprises Capital Investment	5,000.00	5,000.00	5,000.00
Palisade Check Cashing Capital Investment	-	-	5,000.00
Escrow Accounts	-	1,238.00	1,500.00
Loan to Chester Hill Enterprises	-	11,021.00	48,411.00
Loan to Lane Check Cashing	-	1,273.00	24,761.00
Loan to GSC of Westchester	-	6,146.00	6,146.00
	<u>\$ 11,600.00</u>	<u>\$ 37,778.00</u>	<u>\$ 103,318.00</u>

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APPENDIX A-4HAROLD LANE
Mortgages Payable

<u>DESCRIPTION</u>	<u>DATED ACQUIRED</u>	<u>12/31/71</u>	<u>12/31/72</u>	<u>12/31/73</u>
620 South 7th Ave., Mt. Vernon	11/14/69	\$ 35,096.00	\$ 34,584.00	\$ 34,032.00
163 Gibson Ave., Greenburgh	12/15/70	29,729.00	28,429.00	27,167.00
2 George Place, Mt. Vernon	6/4/71	29,837.00	29,389.00	28,957.00
663 So. 3rd Ave., Mt. Vernon	5/12/72	-	45,033.00	43,992.00
105 Waverly Ave., Yonkers	6/2/73	-	-	8,000.00
425 Nuber Ave., Mt. Vernon	11/14/72	-	26,863.00	29,796.00
22 Plain Ave., New Rochelle	12/28/72	-	22,000.00	32,000.00
65 Sherman Ave., Mt. Vernon	2/8/73	-	-	49,021.00
360 South 2nd Ave., Mt. Vernon	12/26/73	-	-	17,500.00
218 South 2nd Ave., Mt. Vernon	11/10/73	-	-	16,792.00
2nd Mortgage 163 Gibson Ave., White Plains	12/15/70	6,593.00	4,258.00	2,725.00
		<u>\$ 101,255.00</u>	<u>\$ 190,556.00</u>	<u>\$ 289,982.00</u>

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APPENDIX A-5HAROLD LANE
Chattel Mortgages Payable

<u>DESCRIPTION</u>	<u>12/31/71</u>	<u>12/31/72</u>	<u>12/31/73</u>
G.M.A.C. (1974 Chevrolet Camaro)		\$ 3,328.00	\$ 3,317.00
Chrysler Credit (1972 MG Convertible)		586.00	
Barclays Bank of New York (1970 Mustang)	\$ 1,661.00	5,935.00	4,286.00
Citi Bank (1970 Grand Prix Pontiac)		\$ 9,849.00	\$ 7,503.00
	<u>\$ 1,661.00</u>		

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APPENDIX A-6

HAROLD LANE
Other Loans

<u>DESCRIPTION</u>	<u>12/31/71</u>	<u>12/31/72</u>	<u>12/31/73</u>
Marshall Cohen	\$ 1,040.00	\$ 1,170.00	\$ 5,000.00
Public Loan Co.	<u>\$ 1,040.00</u>	<u>\$ 1,170.00</u>	<u>2,064.00</u>
			<u>\$ 7,064.00</u>

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1-1183APPENDIX A-7HAROLD LANE
Depreciation Allowance

DESCRIPTION	DATE ACQUIRED	COST	LAND	ADJUSTED BASIS	METHOD	RATE	1971	1972	1973
620 South 7th Ave., Mt. Vernon	11/14/69	-	-	\$ 41,000.00	S.L.	35 yrs.	\$ 1,171.00	\$ 1,171.00	\$ 1,171.00
163 Gibson Ave., Greenburgh	12/15/70	-	-	33,073.00	D.B.	25 yrs.	1,979.00	1,866.00	1,753.00
2 George Place, Mt. Vernon	6/4/71	-	-	26,019.00	S.L.	20 yrs.	759.00	1,301.00	1,301.00
663 So. 3rd Ave., Mt. Vernon	5/12/72	\$ 47,000.00	\$ 9,400.00	37,600.00	S.L.	20 yrs.		1,253.00	1,880.00
105 Waverly Ave., Yonkers	6/2/73	10,000.00	2,000.00	8,000.00	S.L.	20 yrs.			233.00
425 Nuber Ave., Mt. Vernon	11/14/72	26,000.00	5,200.00	21,400.00	S.L.	20 yrs.		178.00	1,070.00
22 Plain Ave., New Rochelle	12/28/72	26,500.00	5,300.00	21,200.00	S.L.	20 yrs.			1,060.00
*65 Sherman Ave., Mt. Vernon	2/8/73	68,000.00							
218 So 2nd Ave., Mt. Vernon	11/10/73	16,792.00	792.00	16,000.00	S.L.	20 yrs.			133.00
360 So 2nd Ave., Mt. Vernon	12/26/73	27,500.00	8,250.00	19,250.00	S.L.	20 yrs.			
Improvements and Equipment	1971	877.00	-	877.00	S.L.	10 yrs.	44.00	88.00	88.00
Improvements	11/14/69	3,000.00	-	3,000.00	S.L.	10 yrs.	300.00	300.00	300.00
							<u>\$ 4,253.00</u>	<u>\$ 6,157.00</u>	<u>\$ 8,989.00</u>

* Non-depreciable property, personal residence

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APPENDIX A-8a

HAROLD LANE
Cost of Living

<u>DESCRIPTION</u>	<u>1972</u>	<u>1973</u>
Interest, Principal, Taxes, etc.	\$ 6,200.00	\$ 6,200.00
Food	3,600.00	3,600.00
Miscellaneous	2,600.00	2,600.00
Utilities	840.00	840.00
	<u>\$ 13,240.00</u>	<u>\$ 13,240.00</u>

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APPENDIX A-8

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A

HAROLD LANE
Adjustments and Increases

ADDITIONS

Personal Living Expenses (A-8a)
Non Deductible Loss on Trade in
of Personal Automobile
Total Additions

12/31/72
\$ 13,240.00

\$ 13,240.00

12/31/73
\$ 13,240.00

1,919.00
\$ 15,159.00

LESS DEDUCTIONS

Income Tax Refunds:
Federal
State
City

\$ 1,143.00
256.00
21.00

-
-
-

Sandra Lane-Net Payroll:
N.Y. Telephone Co.
Student Accident Agency
Total Deductions

921.00
554.00
2,895.00

-
4,308.00
4,308.00

Net Adjustments

\$ 10,345.00

\$ 10,851.00

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1-1183APPENDIX A-9HAROLD LANE
Itemized Deductions

<u>DESCRIPTION</u>	<u>12/31/72</u>	<u>12/31/73</u>
INTEREST: Public Loan Co.	\$ 149.00	\$ 139.00
G.M.A.C. (1970 Chevrolet Camaro)		33.00
Barclays Bank of New York		
(1970 Ford Mustang)	172.00	86.00
Chrysler Credit (1972 MG Convertible)	16.00	313.00
National Bank of Westchester		
(65 Sherman Avenue)		2,612.00
Citi Bank (FNCB)		
(1970 Grand Prix Pontiac)		260.00
	<u>\$ 337.00</u>	<u>\$ 3,443.00</u>
TAXES:		
Sales Tax (Camaro)		\$ 164.00
Sales Tax (1970 MG Convertible)	\$ 159.00	
Real Estate (65 Sherman Ave)		1,350.00
Sales Tax	400.00	800.00
Gasoline	106.00	106.00
	<u>\$ 665.00</u>	<u>\$ 2,420.00</u>
CONTRIBUTIONS	\$ 250.00	\$ 250.00
MEDICAL/HOSPITALIZATION	150.00	150.00
TOTAL DEDUCTIONS	<u>*\$ 1,402.00</u>	<u>\$ 6,263.00</u>

* Standard Deduction of \$2,000 allowed, since it exceeds itemized deductions.

HAROLD LANE

12/31/74

INCOME

Commission on Sale of Food Stamps	\$ 4,638	
Food Stamp Monies Not Deposited to United States	<u>343,712</u>	
Total	\$ 348,350	
Rental Loss	<u>(17,450)</u>	
Corrected Adjusted Gross Income		\$ 330,900
Adjusted Gross Income per Return (Non Filer)		-0-
Understatement of Adjusted Gross Income		<u>\$ 330,900</u>
Less: Itemized Deductions		
Interest: Public Loan Co.	\$ 274	
GMAC Chevrolet Camaro	285	
Mortgage-65 Sherman Ave.	3,243	
Citi Bank-Pontiac		
Grand Prix	<u>312</u>	
	<u>\$ 4,114</u>	
Taxes: Sales Tax-Cadillac	717	
Real Estate 65 Sherman Ave.	2,602	
Sales Tax	1,000	
Gasoline	<u>106</u>	
	<u>\$ 4,425</u>	
Contributions	\$ 250	
Medical-Hospitalization	<u>150</u>	
Total Itemized Deductions		(8,939)
Exemptions 5 at \$750		<u>(3,750)</u>
Taxable Income		<u><u>\$ 318,211</u></u>

HAROLD LANESUMMARY OF TAXABLE INCOME & TAX LIABILITYTAXABLE INCOME

<u>YEAR</u>	<u>PER RETURN</u>	<u>CORRECTED</u>	<u>INCREASE</u>
1972	NO	\$ 36,793.00	\$ 36,793.00
1973	RETURNS	83,358.00	83,358.00
1974	<u>FILED</u>	<u>318,211.00</u>	<u>318,211.00</u>
TOTAL	<u>N O N E</u>	<u>\$438,362.00</u>	<u>\$438,362.00</u>

TAX LIABILITY

<u>YEAR</u>	<u>PER RETURN</u>	<u>CORRECTED</u>	<u>DEFICIENCY</u>
1972	N _O	\$ 9,903.00	\$ 9,903.00
1973	N	32,388.00	32,388.00
1974	<u>E</u>	<u>167,747.00</u>	<u>167,747.00</u>
TOTAL	<u>N O N E</u>	<u>\$210,038.00</u>	<u>\$210,038.00</u>

HAROLD LANECOMPUTATION OF TAXABLE INCOME AND TAX LIABILITY - 1972TAXABLE INCOME

PER RETURN	\$ N O N E	
CORRECTED	36,793.00	
INCREASE	a) <u>\$36,793.00</u>	
a) Gross Income per the Net Worth & Expenditures Method		\$41,793.00
Less: Standard Deduction	\$ 2,000.00	
Exemptions	<u>3,000.00</u>	
TOTAL		<u>5,000.00</u>
INCREASE IN TAXABLE INCOME		<u>\$36,793.00</u>

COMPUTATION OF TAX

1. Taxable Income	<u>\$36,793.00</u>	
2. Tax at joint return rates		<u>\$13,001.00</u>
3. Tax under income averaging at joint return rates		<u>\$ 9,903.00</u>
4. Applicable Tax		<u>\$ 9,903.00</u>
5. Less: Tax per return		N O N E
6. Deficiency of income tax		<u>\$ 9,903.00</u>

No tax return was filed and no estimated or withholding taxes were paid.

Income Averaging

▶ See instructions on pages 3 and 4.
▶ Attach to Form 1040.

A 41

1972

Name(s) as shown on Form 1040

Harold Lane

Your social security number

Taxable Income and Adjustments

	(a) Computation year 1972	(b) 1st preceding base period year 1971	(c) 2d preceding base period year 1970	(d) 3d preceding base period year 1969	(e) 4th preceding base period year 1968
1 Taxable income (see instruction 1)	41793-	7752-	16146-	10795-	3914-
2 Income earned outside of the United States or within U.S. possessions and excluded under sections 911 and 931					
3 Excess community income and certain amounts received by owner-employees subject to a penalty under section 72(m)(5). See instruction 3					
4 Accumulation distributions subject to section 668(a)					
5 Adjusted taxable income or base period income. (Line 1 plus line 2, less lines 3 and 4). If less than zero, enter zero	41793-	7752-	16146-	10795-	3914-

Computation of Averagable Income

6 Adjusted taxable income from line 5, column (a)	6	41793-
7 30% of the sum of line 5, columns (b), (c), (d), and (e)	7	11582-
8 Averagable income (line 6 less line 7)	8	30211-

Complete the remaining parts of this form only if line 8 is more than \$3,000. If \$3,000 or less, you do not qualify for income averaging. Do not fill in rest of form.

G

Computation of Tax

9 Amount from line 7	9	11582-
10 20% of line 8	10	6042-
11 Total (add lines 9 and 10)	11	17624-
12 Amount from line 3, column (a), less any income subject to a penalty under section 72(m)(5) which was included in line 3	12	
13 Total (add lines 11 and 12)	13	17624-
14 Tax on amount on line 13	14	3715-
15 Tax on amount on line 11	15	3715-
16 Tax on amount on line 9	16	2168-
17 Difference (line 15 less line 16)	17	1547-
18 Multiply the amount on line 17 by 4	18	6188-
19 Total (add lines 14 and 18)	19	9903-
20 Tax on income subject to the penalty under section 72(m)(5) which was included in line 3	20	
21 Tax on accumulation distributions subject to section 668(a)	21	
22 Tax (add lines 19, 20 and 21). Enter here and on Form 1040, line 18. Also check Schedule G box on Form 1040, line 18	22	9903-

HAROLD LANECOMPUTATION OF TAXABLE INCOME AND TAX LIABILITY - 1973TAXABLE INCOME

PER RETURN	\$ N O N E	
CORRECTED	<u>83,358.00</u>	
INCREASE	a) <u>\$83,358.00</u>	
a) Gross Income per the Net Worth & Expenditures Method		\$92,621.00
Less: Itemized Deductions	\$6,263.00	
Exemptions	<u>3,000.00</u>	
TOTAL		<u>9,263.00</u>
INCREASE IN TAXABLE INCOME		<u>\$83,358.00</u>

COMPUTATION OF TAX

1. Taxable Income	<u>\$83,358.00</u>	
2. Tax at joint return rates		<u>\$40,753.00</u>
3. Tax under income averaging at joint return rates		<u>\$32,388.00</u>
4. Applicable Tax		<u>\$32,388.00</u>
5. Less: Tax per return		<u>N O N E</u>
6. Deficiency of income tax		<u>\$32,388.00</u>

No tax return was filed and no estimated or withholding taxes were paid.

SCHEDULE G
(Form 1040)Department of the Treasury
Internal Revenue Service

Income Averaging

▶ See instructions on pages 3 and 4.
▶ Attach to Form 1040.

1973

Name(s) as shown on Form 1040

Harold Lane

Your social security number

Taxable Income and Adjustments

	(a) Computation year 1973	(b) 1st preceding base period year 1972	(c) 2d preceding base period year 1971	(d) 3d preceding base period year 1970	(e) 4th preceding base period year 1969
1 Taxable income (see instruction 1) . . .	92621-	41793-	7752-	16146-	10795-
2 Income earned outside of the United States or within U.S. possessions and excluded under sections 911 and 931 . . .					
3 Excess community income and certain amounts received by owner-employees subject to a penalty under section 72(m)(5). See instruction 3 . . .					
4 Accumulation distributions subject to section 668(a). See Form 4970 . . .					
5 Adjusted taxable income or base period income. (Line 1 plus line 2, less lines 3 and 4.) If less than zero, enter zero . . .	92621-	41793-	7752-	16146-	10795-

Computation of Averagable Income

6 Adjusted taxable income from line 5, column (a)	6	92621-
7 30% of the sum of line 5, columns (b), (c), (d), and (e)	7	22946-
8 Averagable income (line 6 less line 7)	8	69675-

Complete the remaining parts of this form only if line 8 is more than \$3,000. If \$3,000 or less, you do not qualify for income averaging. Do not fill in rest of form.

G

Computation of Tax

9 Amount from line 7	9	22946-
10 20% of line 8	10	13935-
11 Total (add lines 9 and 10)	11	36881-
12 Amount from line 3, column (a), less any income subject to a penalty under section 72(m)(5) which was included in line 3	12	
13 Total (add lines 11 and 12)	13	36881-
14 Tax on amount on line 13	14	10736-
15 Tax on amount on line 11	15	10736-
16 Tax on amount on line 9	16	5323-
17 Difference (line 15 less line 16)	17	5413-
18 Multiply the amount on line 17 by 4	18	21652-
19 Total (add lines 14 and 18)	19	32388-
20 Tax on income subject to the penalty under section 72(m)(5) which was included in line 3	20	
21 Tax (add lines 19 and 20). Enter here and on Form 1040, line 16. Also check Schedule G box on Form 1040, line 16	21	32388-

HAROLD LANECOMPUTATION OF TAXABLE INCOME & TAX LIABILITY - 1974TAXABLE INCOME

PER RETURN		\$ N O N E	
CORRECTED		318,211.00	
INCREASE		a) <u>\$318,211.00</u>	
a) Unreported Commissions on Sale of			
Food Stamps	\$ 4,638.00		
Food Stamp Monies not deposited to			
the United States	<u>343,712.00</u>		
GROSS INCOME			\$348,350.00
Less: Rental Loss			<u>17,450.00</u> *
Adjusted Gross Income			\$330,900.00
Less: Itemized Deductions	\$ 8,939.00		
Exemptions	<u>3,750.00</u>		
TOTAL			<u>\$ 12,689.00</u>
INCREASE IN TAXABLE INCOME			<u>\$318,211.00</u>

COMPUTATION OF TAX

1. Taxable Income	<u>\$318,211.00</u>	
2. Tax at joint return rates		<u>\$193,728.00</u>
3. Tax under income averaging at joint		
return rates		<u>\$167,747.00</u>
4. Applicable Tax		<u>\$167,747.00</u>
5. Less: Tax per return		N O N E
6. Deficiency of income tax		<u>\$167,747.00</u>

No tax return was filed and no estimated or withholding taxes were paid.

SCHEDULE G
(Form 1040)
Department of the Treasury
Internal Revenue Service

Income Averaging
▶ See instructions on pages 3 and 4.
▶ Attach to Form 1040.

1974

Name(s) as shown on Form 1040

Harold Lane

Your social security number

Taxable Income and Adjustments

	(a) Computation year 1974	(b) 1st preceding base period year 1973	(c) 2d preceding base period year 1972	(d) 3d preceding base period year 1971	(e) 4th preceding base period year 1970
1 Taxable income (see instruction 1) . . .	318211-	92621-	41793-	7752-	16145-
2 Income earned outside of the United States or within U.S. possessions and excluded under sections 911 and 931 . . .					
3 Excess community income and certain amounts received by owner-employees subject to a penalty under section 72(m)(5). (see instruction 3)					
4 Accumulation distributions subject to section 668(a). (see Form 4970).					
5 Adjusted taxable income or base period income. (Line 1 plus line 2, less lines 3 and 4.) If less than zero, enter zero . . .	318211-	92621-	41793-	7752-	16145-

Computation of Averagable Income

6 Adjusted taxable income from line 5, column (a)	6	318211-
7 30% of the sum of line 5, columns (b), (c), (d), and (e)	7	47494-
8 Averagable income (line 6 less line 7)	8	270717-

Complete the remaining parts of this form only if line 8 is more than \$3,000. If \$3,000 or less, you do not qualify for income averaging. Do not fill in rest of form.

G

Computation of Tax

9 Amount from line 7	9	47494-
10 20% of line 8	10	54143-
11 Total (add lines 9 and 10)	11	101637-
12 Amount from line 3, column (a), less any income subject to a penalty under section 72(m)(5) which was included in line 3	12	
13 Total (add lines 11 and 12)	13	101637-
14 Tax on amount on line 13	14	46195-
15 Tax on amount on line 11	15	46195-
16 Tax on amount on line 9	16	15807-
17 Difference (line 15 less line 16)	17	30388
18 Multiply the amount on line 17 by 4	18	121552-
19 Total (add lines 14 and 18)	19	167747-
20 Tax on income subject to the penalty under section 72(m)(5) which was included in line 3	20	
21 Tax (add lines 19 and 20). Enter here and on Form 1040, line 16. Also check Schedule G box on Form 1040, line 16	21	167747-

DEPOSITS AS CERTIFIED BY LANE ON MONTHLY 250 REPORTS

1973 DATE	TRANSMITTAL NUMBER	AMOUNT
March 31	001	\$ 147.50
April 2	002	2,208.00
April 16	003	1,035.75
April 30	004	493.00
May 3	005	1,030.50
May 26	006	1,000.50
May 31	007	504.00
June 2	008	1,711.50
June 26	009	1,041.50
June 30	010	401.50
July 2	011	2,370.25
July 3	012	1,319.00
July 26	013	1,147.25
July 31	014	206.25
Aug. 3	015	1,238.25
Aug. 8	016	1,405.25
Aug. 31	017	870.50
Sept. 1	018	3,088.00
Sept. 23	019	1,369.75
Sept. 29	020	1,182.50
Sept. 29	021	3,157.00
Oct. 26	022	1,754.77
Oct. 31	023	1,455.00
Nov. 1	024	1,079.50
Nov. 29	025	1,479.25
Nov. 30	026	1,483.50
Dec. 1	027	3,811.25
TOTAL		\$ 37,991.02

VERIFICATION BY FEDERAL RESERVE BANK RECORDS

1973 DATE	AMOUNT	TRANSMITTAL NUMBER
May 10	\$ 3,391.25	3
May 10	493.00	4
May 10	1,030.50	5
	1,000.50	6
June 7	504.00	7
June 8	1,711.50	8
	1,041.50	9
June 30	401.50	10
July 12	2,370.25	11
July 12	1,319.00	12
Aug. 3	1,147.25	13
Aug. 14	206.25	14
Aug. 14	1,238.25	15
Aug. 14	1,405.25	16
Sept. 11	870.50	17
Sept. 11	3,088.00	18
Oct. 5	1,369.75	19
Oct. 5	1,182.50	20
Oct. 11	3,157.00	21
Nov. 7	1,754.77	22
Nov. 7	1,455.00	23
Nov. 7	1,079.50	24
Dec. 5	1,479.25	25
Dec. 10	1,483.50	26
Dec. 10	3,811.25	27
TOTAL		\$ 37,991.02

VERIFICATION BY NATIONAL BANK OF WESTCHESTER RECORDS

1973 DATE	AMOUNT	CHECK NUMBER
May 7	\$ 3,391.25	808034
May 7	493.00	808041
May 7	1,030.50	808042
May 29	1,000.50	809524
June 5	504.00	808332
June 6	1,711.50	809545
June 28	1,041.50	809589
July 6	401.50	809628
July 9	2,370.25	808685
July 9	1,319.00	808686
July 31	1,147.25	808927
Aug. 9	206.50	809030
Aug. 10	1,238.25	813351
Aug. 10	1,405.25	813352
Sept. 7	870.50	843063
Sept. 7	3,088.00	843062
Oct. 2	1,369.75	809850
Oct. 5	3,157.00	843264
Oct. 30	1,754.77	809922
Nov. 5	1,455.00	848412
Nov. 5	1,079.50	848415
Nov. 29	1,479.25	809981
Dec. 7	1,483.50	843668
Dec. 7	3,811.25	843669
TOTAL		\$ 36,808.52

DEPOSITS AS CERTIFIED BY LANE ON MONTHLY 250 REPORTS

1974 DATE	TRANSMITTAL NUMBER	AMOUNT
Jan. 4	028	\$ 3,563.00
Jan. 31	029	3,890.00
Feb. 28	030	3,786.75
March 31	031	4,594.75
April 30	032	22,872.25
May 30	033	23,943.50
June 29	034	37,203.00
July 24	035	7,506.00
July 31	036	34,642.00
Aug. 2	037	6,910.00
Aug. 6	038	6,816.25
Aug. 12	039	2,101.75
Aug. 21	040	1,666.00
Aug. 27	041	10,000.00
Aug. 31	042	9,175.25
Sept. 9	043	12,885.25
Sept. 10	044	5,000.00
Sept. 13	045	6,000.00
Sept. 16	046	7,000.00
Sept. 30	047	10,411.00
Oct. 4	048	10,000.00
Oct. 9	049	15,000.00
Oct. 15	050	4,000.00
Oct. 21	1	10,000.00
Oct. 31	2	5,796.75
Nov. 3	3	15,000.00
Nov. 11	4	19,000.00
Nov. 18	5	10,000.00
Nov. 30	6	6,281.25
Dec. 4	7	17,276.00
Dec. 6	8	7,500.00
Dec. 11	9	5,400.00
Dec. 13	10	2,300.00
Dec. 17	11	12,000.00
Dec. 23	12	4,200.00
Dec. 31	13	12,449.25

TOTAL \$376,170.00

VERIFICATION BY FEDERAL RESERVE BANK RECORDS

1974 DATE	AMOUNT	TRANSMITTAL NUMBER
	\$ 3,563.00	28
July 30	7,506.00	007
Aug. 9	6,910.00	009
Aug. 9	6,816.25	010
Aug. 15	2,101.75	011
Aug. 26	1,666.00	012

TOTAL \$28,563.00

VERIFICATION BY NATIONAL BANK OF WESTCHESTER RECORDS

1974 DATE	AMOUNT	CHECK NUMBER
Jan. 4	\$ 3,563.00	843856
July 24	7,506.00	867912
Aug. 2	6,910.00	922775
Aug. 6	6,816.25	870717
Aug. 12	2,101.75	868039
Aug. 21	1,666.00	868094

TOTAL \$28,563.00

PURCHASES ONLY-VERIFIED BY BANK OF WESTCHESTER RECORDS

1974 DATE	AMOUNT	CHECK NUMBER
Sept. 9	\$ 2,885.25	868225 Re
Sept. 10	5,000.00	868237 Re

Dec. 4	17,276.00	868706 Re
Dec. 10	7,500.00	868743 Re

**DEPOSITS AS CERTIFIED BY
PLANE ON MONTHLY 250 REPORTS**

1975 DATE	TRANSMITTAL NUMBER	AMOUNT
Jan. 7	14	\$ 15,000.00
Jan. 13	15	18,000.00
Jan. 17	16	10,000.00
Jan. 22	17	6,000.00
Jan. 31	18	15,180.25
Feb. 4	19	20,000.00
Feb. 7	20	12,000.00
Feb. 13	21	10,000.00
Feb. 18	22	13,000.00
Feb. 24	23	10,000.00
Feb. 28	24	17,662.50
March 7	25	10,000.00
March 13	26	10,000.00
March 17	27	15,000.00
March 24	28	10,000.00
March 31	29	13,622.50
April 7	30	11,000.00
April 10	31	15,000.00
April 17	32	10,000.00
April 22	33	10,000.00
April 29	34	13,896.50
May 2	35	23,000.00
May 7	36	11,000.00
May 12	37	8,000.00
May 17	38	9,000.00
May 22	39	7,500.00
May 28	40	8,000.00
May 31	41	10,349.75
June 3	42	15,000.00
June 6	43	17,800.00
June 13	44	7,000.00
June 16	45	8,000.00
June 20	46	10,000.00
June 30	47	6,886.00
July 3	48	10,000.00
July 7	49	10,000.00
July 10	50	15,000.00
July 15	1	10,000.00
July 23	2	11,000.00
July 31	3	8,338.75
Aug. 1	4	18,000.00
Aug. 7	5	15,000.00
Aug. 11	6	10,000.00
Aug. 15	7	15,000.00
Aug. 18	8	6,000.00
Aug. 20	9	9,000.00
Aug. 25	10	10,000.00
Aug. 31	11	5,966.25
Sept. 3	12	15,000.00
Sept. 5	13	20,000.00
Sept. 9	14	5,000.00
Sept. 12	15	7,500.00
Sept. 17	16	7,000.00
Sept. 22	17	5,000.00
Sept. 25	18	8,000.00
Sept. 30	19	5,000.00
Sept. 30	20	2,613.75
Oct. 2	21	10,000.00
Oct. 3	22	17,000.00
Oct. 7	23	6,000.00
Oct. 10	24	9,000.00
Oct. 17	25	14,500.00
Oct. 23	26	10,000.00
Oct. 28	27	4,000.00
Oct. 31	28	5,564.00

**VERIFICATION BY FEDERAL
RESERVE BANK RECORDS**

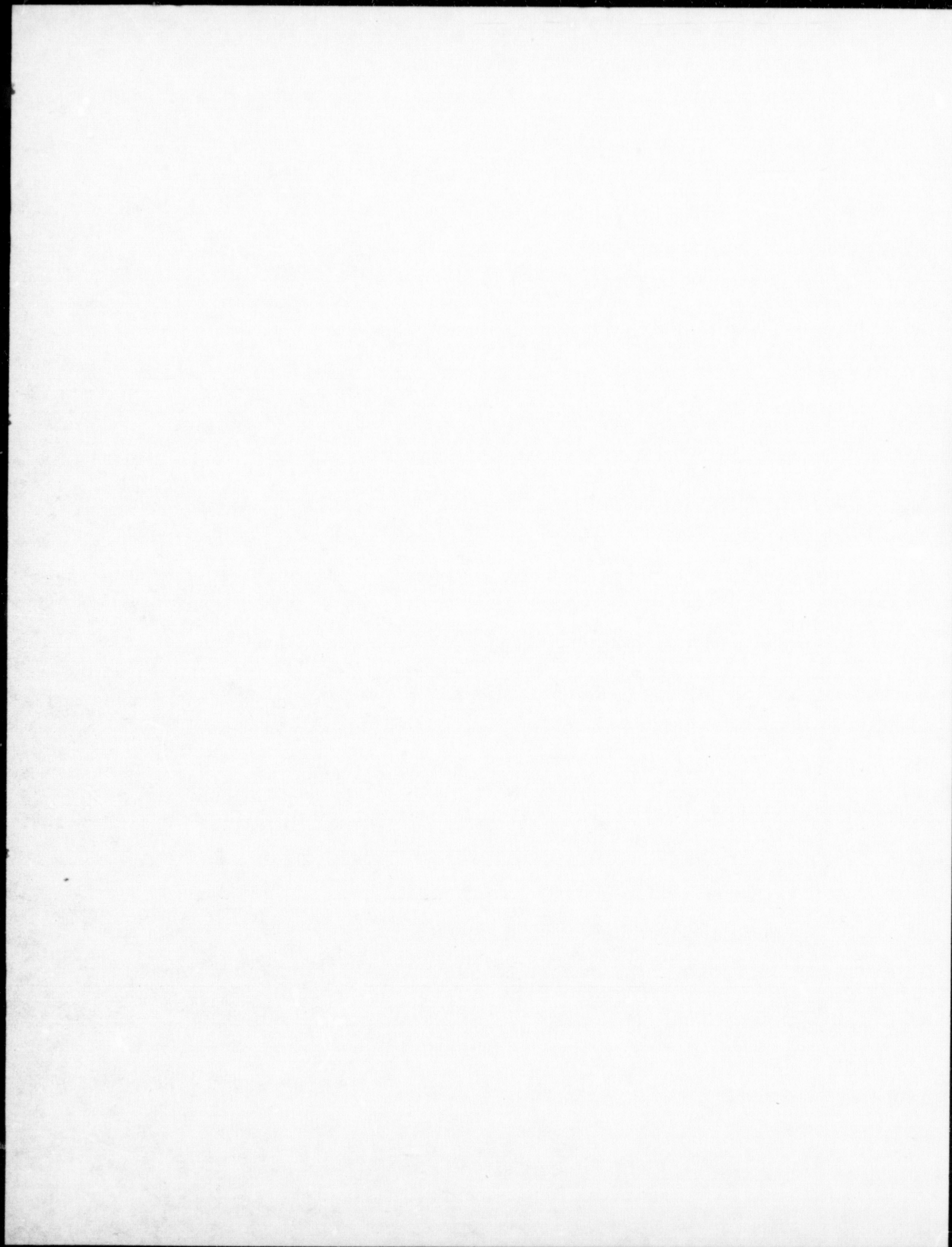
1975 DATE	AMOUNT	TRANSMITTAL NUMBER
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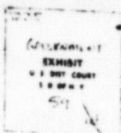
**VERIFICATION BY NATIONAL
BANK OF WESTCHESTER RECORDS**

1975 DATE	AMOUNT	CHECK NUMBER
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**PURCHASES ONLY - VERIFIED BY NAT
BANK OF WESTCHESTER RECORDS**

1975 DATE	AMOUNT	CHECK NUMBER
Jan. 7	\$ 15,000.00	868883 Register Copy
Feb. 7	12,000.00	869057 Register Copy
March 7	10,000.00	869175 Register Copy
March 13	10,000.00	869207 Register Copy
March 24	10,000.00	869252 Register Copy
April 7	11,000.00	869325 Register Copy
May 7	11,000.00	870409 Register Copy
May 12	8,000.00	870421 Register Copy

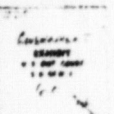




U.S. FOOD STAMPS SOLD BY
LANE CHECK CASHING, INC.

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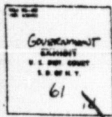
<u>MONTH</u>	<u>ATPS PROCESSED</u>	<u>FACE VALUE FOOD STAMPS ISSUED</u>	<u>CASH COLLECTED</u>
March 1973	4	\$ 202.00	\$ 147.50
April	116	5,320.00	3,736.75
May	98	3,674.00	2,535.00
June	111	4,625.00	3,154.50
July	164	7,359.00	5,042.75
August	137	5,406.00	3,514.00
September	188	8,328.00	5,640.25
October	202	9,463.00	6,366.75
November	153	6,160.00	4,042.25
December	247	11,031.00	7,374.25
	<u>1420</u>	<u>\$ 61,568.00</u>	<u>\$ 41,554.00</u>
January 1974	128	\$ 5,817.00	\$ 3,890.00
February	131	5,607.00	3,786.75
March	137	7,446.00	4,594.75
April	510	37,972.00	22,856.25
May	584	40,200.00	23,943.50
June	841	62,063.00	37,203.00
July	907	69,308.00	41,832.00
August	817	59,424.00	36,669.25
September	958	67,060.00	41,296.25
October	1013	72,450.00	44,796.75
November	1081	80,761.00	50,281.25
December	1326	98,418.00	61,125.25
	<u>8433</u>	<u>\$606,526.00</u>	<u>\$372,275.00</u>
January 1975	1468	\$103,955.00	\$ 64,180.25
February	1811	134,765.00	82,662.50
March	1326	97,200.00	58,622.50
April	1327	98,809.00	59,896.50
May	1717	126,821.00	76,849.75
June	1488	106,209.00	64,686.00
July	1466	109,549.00	64,338.75
August	1897	152,389.00	88,966.25
September	1741	130,452.00	75,113.75
October	1747	130,353.00	76,064.00
November	438	45,672.00	27,376.50
	<u>16,426</u>	<u>\$1,236,174.00</u>	<u>\$738,756.75</u>
Grand Totals	26,279	\$1,904,268.00	\$1,152,585.75



U.S. FOOD STAMPS. LANE CHECK CASHING, INC.

	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>Total</u>
U.S. Food Stamps Received	\$118,000	\$726,000	\$1,729,000	\$2,573,000
Minus : U.S. Food Stamps Transferred Out	<u>-26,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-26,000</u>
Total : U.S. Food Stamps to be Accounted For by Lane	92,000	726,000	1,729,000	2,547,000
Minus: U.S. Food Stamps Issued Via ATPs	<u>-61,568</u>	<u>-606,526</u>	<u>-1,236,174</u>	<u>-1,904,268</u>
U.S. Food Stamps on Hand	\$ 30,432	\$ 119,474	\$ 492,826	642,732
Minus: U.S. Food Stamps Recovered				<u>- 623,802</u>
U.S. Food Stamps Shortage				\$ 18,930

U. S. FOOD STAMP MONEY, LANE CHECK CASHING, INC



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	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>Total</u>
Cash Received from Sale of U. S. Food Stamps Via ATPs	\$ 41,554.00	\$ 372,275.00	\$ 738,756.75	\$ 1,152,585.75
Minus: U.S. Food Stamp Money Deposited to U.S.	<u>-37,991.02</u>	<u>-28,563.00</u>	<u>-0-</u>	<u>-66,554.02</u>
U.S. Food Stamp Money Shortage	\$ 3,562.98	\$ 343,712.00	\$ 738,756.75	1,086,031.73
Minus: Possible Overissuance of U. S. Food Stamps				<u>-18,930.00</u>
Minimum Total Money Not Deposited to U.S.				\$ 1,067,101.73

SUMMARY - LANE DEPOSITSDATE OF
CERTIFICATIONAMOUNTS CERTIFIED
AS DEPOSITEDACTUAL
DEPOSITS

February 15, 1974	\$ 3,890.00	-0-
February 28, 1974	3,786.75	-0-
March 31, 1974	4,594.75	-0-
April 30, 1974	22,872.25	-0-
June 1, 1974	23,943.50	-0-
June 19, 1974	37,203.00	-0-
August 3, 1974	34,642.00	-0-
August 31, 1974	19,175.25	-0-
September 30, 1974	41,296.25	-0-
October 31, 1974	44,796.75	-0-
November 30, 1974	50,281.25	-0-
December 31, 1974	61,125.25	-0-
January 31, 1975	64,180.25	-0-
February 28, 1975	82,662.50	-0-
March 31, 1975	58,662.50	-0-
April 30, 1975	59,896.50	-0-
May 31, 1975	76,849.75	-0-
June 30, 1975	64,686.00	-0-
July 31, 1975	64,338.75	-0-
September 15, 1975	88,966.25	-0-
October 15, 1975	75,113.75	-0-
October 31, 1975	76,064.00	-0-

AFFIDAVIT OF MAILING

State of New York)
County of New York)

To Ann Harris being duly sworn
deposes and says that *she* is employed in the office of the
United States Attorney for the Southern District of New
York.

Stating also that on the *26th* day of *August* 1977
she served *2* copies of the within *Appendix*
by placing the same in a properly postpaid franked envelope
addressed:

J. Radley Herold
175 Main St. - Suite 300
White Plains, N.Y. 10601

And deponent further says that *she* sealed the said envelope
and placed the same in the mailbox for mailing at the United
States Courthouse, Foley Square, Borough of Manhattan, City
of New York

John Harris

Sworn to me before this

26th day of *August*, 1977

Alma Hanson

ALMA HANSON
NOTARY PUBLIC, State of New York
No. 24-6763450 Qualified in Kings Co.
Commission Expires March 30, 19*78*